

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 DRAYDEN D. SHUMPERT,

Case No. 2:15-cv-02273-JAD-EJY

5 Plaintiff,

ORDER

6 v.

7 D. MADRID, *et al.*,

8 Defendants.
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10 Presently before the Court is Defendants' Motion to Stay Discovery (ECF No. 51), Plaintiff's
11 Motion for Appointment of Counsel (ECF No. 52), and Plaintiff's Motion to Reopen Discovery
12 (ECF No. 54). No responses have been filed in response to any of these Motions. The Court finds
13 as follows.

14 **I. BACKGROUND**

15 This case concerns Defendants' alleged beating of Plaintiff, which took place while Plaintiff
16 was incarcerated at the Clark County Detention Center ("CCDC"). On February 10, 2015, the State
17 of Nevada filed a criminal complaint against Plaintiff for the crime of "battery by prisoner." *State*
18 *of Nevada v. Shumpert*, Case No. C-15-304663-1. On December 1, 2015, Plaintiff filed his
19 Complaint asserting a single 42 U.S.C. § 1983 claim for excessive force against Defendants in
20 federal court, based on the same set of facts underlying the criminal complaint filed against him in
21 state court. ECF No. 1-1.

22 On July 11, 2016, Defendants filed their Motion to Dismiss on the basis that Plaintiff failed
23 to exhaust administrative remedies as required by the Prison Litigation Reform Act ("PLRA"),
24 codified at 42 U.S.C. § 1997e. ECF No. 14. On September 27, 2016, Defendants filed their first
25 Motion to Stay Discovery, arguing that their Motion to Dismiss was potentially dispositive of the
26 entire case. ECF No. 22.
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1 On October 13, 2016, Judge Foley granted Defendants' first Motion to Stay Discovery in
2 part, allowing "[t]he parties [to only] conduct discovery regarding whether Plaintiff exhausted his
3 administrative remedies prior to filing his complaint," and staying discovery for all other purposes.
4 ECF No. 25 at 3:15–16.

5 On November 1, 2016, Plaintiff filed a "Reply To The Exhaustion of Administrative
6 Allegations," and attached a January 19, 2016 letter from the Citizen Review Board confirming
7 receipt of his complaint of misconduct. ECF No. 26 at 4. However, this letter does not discuss
8 whether the complaint concerned the same events underlying the present action.

9 On December 27, 2016, Defendants filed their second Motion for Stay of Discovery. ECF
10 No. 31. Defendants argued that the proceedings should be stayed during the pendency of Plaintiff's
11 criminal matter "[a]s any judgment in this matter would affect the validity of a potential state court
12 conviction." *Id.* at 6:6–7.

13 On January 11, 2017, Judge Dorsey granted Defendants' second Motion for Stay of
14 Discovery, stayed this case through the conclusion of Plaintiff's criminal proceedings in state court,
15 and denied all outstanding motions (including Defendants' Motion to Dismiss) without prejudice.
16 ECF No. 32. After pleading guilty and being convicted in the companion state court case, Plaintiff
17 moved to lift the stay. ECF Nos. 45, 47.

18 On January 14, 2020, Judge Dorsey granted Plaintiff's Motions to Lift Stay of Case,
19 permitting Defendants to renew their motion to dismiss and permitting any party wishing to reopen
20 discovery to file a motion to do so. ECF No. 48.

21 On February 11, 2020, Defendants refiled their Motion to Dismiss, which is now pending
22 before Judge Dorsey. ECF No. 50. Defendants argue in their renewed Motion to Dismiss that
23 Plaintiff's Complaint must be dismissed because he failed to exhaust his administrative remedies as
24 statutorily required under the PLRA, and because a judgment in favor of Plaintiff's excessive force
25 claim would invalidate his criminal conviction.

26 The instant Motions followed.
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1 **II. DISCUSSION**

2 **A. Discovery is Stayed Pending Outcome of Defendants’ Motion to Dismiss.**

3 Generally, a dispositive motion does not warrant a stay of discovery. *Tradebay, LLC v. eBay,*
4 *Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). Indeed, under certain circumstances it is an abuse of
5 discretion to deny discovery while a dispositive motion is pending (*id.* at 602) and, for this reason,
6 a party seeking a stay of discovery carries the heavy burden of making a strong showing why the
7 discovery process should be halted (*Turner Broadcasting System, Inc. v. Tracinda Corp.*, 175 F.R.D.
8 554, 556 (D. Nev. 1997)). When deciding whether to issue a stay, a court must take a “preliminary
9 peek” at the merits of the dispositive motion pending in the case. *Buckwalter v. Nevada Bd. of*
10 *Medical Examiners*, No. 2:10-cv-02034-KJD-GWF, 2011 WL 841391, at *1 (D. Nev. March 7,
11 2011). In doing so, the court must consider whether the pending motion is potentially dispositive of
12 the entire case, and whether that motion can be decided without additional discovery. *Tradebay,*
13 278 F.R.D. at 602.

14 **1. Defendants’ Motion to Dismiss is potentially case dispositive.**

15 Defendants’ Motion to Dismiss is potentially case dispositive, which satisfies the first prong
16 of the *Tradebay* test for granting a motion to stay discovery pending a dispositive motion. *Id.* at 608.
17 The Court took a “preliminary peek” at the merits of Defendants’ Motion to Dismiss and finds
18 Defendants have made strong legal arguments that Plaintiff’s Complaint fails to state a claim upon
19 which relief can be granted. Specifically, Defendants’ Motion to Dismiss will likely dispose of the
20 entire case because Plaintiff failed to exhaust his administrative remedies prior to filing this action,
21 and because a judgment in favor of Plaintiff’s civil rights claim would necessarily imply that
22 Plaintiff’s criminal court conviction is invalid.

23 *a. Defendants’ Motion to Dismiss likely demonstrates that Plaintiff*
24 *failed to exhaust his administrative remedies prior to filing this action.*

25 The PLRA states that:

26 No action shall be brought with respect to prison conditions under section 1983 of
27 this title, or any other Federal law, by a prisoner confined in any jail, prison, or
28 other correctional facility *until such administrative remedies as are available are*
exhausted.

1 42 U.S.C. § 1997e (emphasis added). “In the rare event that a failure to exhaust is clear on the face
2 of the complaint, a defendant may move for dismissal under Rule 12(b)(96).” *Albino v. Baca*, 747
3 F.3d 1162, 1166 (9th Cir. 2014).

4 Here, Defendants allege in their renewed Motion to Dismiss that “Plaintiff [f]ailed to
5 [e]xhaust [a]dministrative [r]emedies as [r]equired by 42 U.S.C. § 1997e(a)” prior to filing this suit.
6 ECF No. 50 at 6:17–18. Defendants claim, *inter alia*, that Plaintiff: “admits that he failed to exhaust
7 his available administrative procedures,” “presents no evidence that he followed any of CCDC’s
8 other available grievance processes,” and “did not provide any evidence that these other available
9 procedures were made unavailable to him[.]” *Id.* at 6:19–20, 7:18, 7:21–22 (internal citation
10 omitted). Plaintiff contests these allegations: he claims he was denied access to the grievance
11 process and began filing grievances once he was able to do so. ECF No. 53 at 3:14–20. In support,
12 Plaintiff attached two grievances he filed with the CCDC, but both are dated after the initiating
13 Complaint in this case. *Id.* at 6, 7. Plaintiff also attached five “Mental/Dental/Psychiatric Requests”
14 (*id.* at 8–12), but these are not administrative grievances and only two requests pertain to the alleged
15 beating he received from Defendants (*id.* at 8, 9). The Court also notes that Plaintiff submitted a
16 letter from the Citizen Review Board acknowledging receipt of his complaint of misconduct, but it
17 is unclear whether this complaint is premised on the same events underlying the instant action. ECF
18 No. 26 at 4. In any event, it does not appear as if Plaintiff exhausted all the administrative remedies
19 available to him prior to filing the Complaint in this matter.

20 If Defendants’ allegations are true, then dismissal of Plaintiff’s case is required under the
21 PLRA. On the basis of Plaintiff’s purported failure to exhaust his administrative remedies alone,
22 Defendants’ Motion to Dismiss is potentially case dispositive.

23 *b. Defendants’ Motion to Dismiss likely demonstrates that a judgment in*
24 *favor of Plaintiff’s civil rights claim would necessarily imply that*
Plaintiff’s criminal court conviction is invalid.

25 [W]hen a state prisoner seeks damages in a § 1983 suit, the district court must
26 consider whether a judgment in favor of the plaintiff would necessarily imply the
27 invalidity of his conviction or sentence; if it would, the complaint must be
28 dismissed unless the plaintiff can demonstrate that the conviction or sentence has
already been invalidated. But if the district court determines that the plaintiff’s

1 action, even if successful, will not demonstrate the invalidity of any outstanding
2 criminal judgment against the plaintiff, the action should be allowed to proceed, in
the absence of some other bar to the suit.

3 *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). “*Heck*, in other words, says that if a criminal
4 conviction arising out of the same facts stands and is fundamentally inconsistent with the unlawful
5 behavior for which section 1983 damages are sought, the 1983 action must be dismissed.” *Smithart*
6 *v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996).

7 The Court believes Defendants will prevail on this basis: “[b]ecause Plaintiff was convicted
8 of willful and unlawful use of force or violence against Defendants, Defendants[’] actions must be
9 objectively reasonable in light of the fact and circumstances that confronted them.” ECF No. 51 at
10 6:16–18. Plaintiff’s challenge that “[D]efendants used force[] far greater than that required for his
11 arrest, and out of proportion to the threat which he posed to the defendants,” is precluded by his
12 guilty plea and subsequent conviction in state court. ECF No. 53 at 2:19–21. In other words,
13 Plaintiff’s excessive force claim is barred by his battery conviction in the accompanying criminal
14 state case and, therefore, Defendants’ Motion to Dismiss is likely to be case dispositive.

15 **2. Defendants’ Motion to Dismiss can be decided without discovery.**

16 Defendants’ Motion to Dismiss can be decided without additional discovery, which satisfies
17 the second prong of the *Tradebay* test for granting a motion to stay discovery pending a dispositive
18 motion. *Tradebay*, 278 F.R.D. at 608. While it is true that “[t]he fact that a non-frivolous . . . motion
19 is pending is simply not enough to warrant a blanket stay of all discovery,” here, the Court believes
20 the Defendants have sufficiently carried its heavy burden to show why discovery should be stayed.
21 *Id.* at 603. Specifically, Defendants’ Motion to Dismiss can be decided purely on the legal
22 sufficiency of Plaintiff’s claim, pursuant to Fed. R. Civ. P. 12(b)(6). That is, dismissal is appropriate
23 under Fed. R. Civ. P. 12(b)(6) where a pleader fails to state a claim upon which relief can be granted.
24 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

25 Accordingly, the Court grants Defendants’ Motion to Stay Discovery (ECF No. 51), and
26 denies Plaintiff’s Motion to Reopen Discovery (ECF No. 54).

1 **B. No Exceptional Circumstance Warrants Appointment of Counsel at This Time.**

2 Plaintiff's third Motion for Appointment of Counsel is also before this Court. ECF No. 52.
3 In its January 16, 2020 Order denying Plaintiff's second Motion to Appoint Counsel (ECF No. 46),
4 this Court held that:

5 Plaintiff's Motion fails to identify any exceptional circumstance warranting
6 appointment of counsel. In fact, Plaintiff says only that he does not have "any
7 money to pay for counsel" and that "justice will be best served" if counsel is
8 appointed. While Plaintiff's *In Forma Pauperis* status establishes that he is unable
9 to pay for counsel (*West v. Brickman*, 07 Civ. 7260(PKC)(DF), 2008 WL 3303773,
10 *1 (S.D.N.Y. Aug. 6, 2008), his desire to ensure justice is best served does not meet
11 the exceptional circumstances test. [*Wood v.*] *Housewright*, 900 F.2d 1332, 1335
12 (9th Cir. 1990) (explaining that prisoner litigants' lack of a legal education does not
13 constitute "exceptional circumstances"); *Zamaro v. Moonga*, 656 F. App'x 297, 299
14 (9th Cir. 2016) (explaining that lack of adequate knowledge of "complex legal and
15 medical issues" is not an exceptional circumstance "in light of the legal competence
16 of most prisoners in similar situations."); *Sands v. Lewis*, 886 F.2d 1166, 1169 (9th
17 Cir. 1989) ("the Constitution does not require the elimination of all economic,
18 intellectual, and technological barriers to litigation"). As such, exceptional
19 circumstances do not exist justifying the appointment of counsel at this time.

20 ECF No. 49 at 1:21–2:5.

21 In the instant Motion, Plaintiff "alleges that the issues in this case are complex, that [he] is
22 unable to adequately present the claims without the assistance of counsel, and that [he] is unable to
23 retain private counsel to represent him[.]" ECF No. 52 at 2. As the Court previously noted, however,
24 the exceptional circumstances test warranting appointment of counsel is not satisfied simply because
25 a *pro se* inmate identifies "factors . . . which any litigant would have in proceeding pro se[. These
26 are] not . . . exceptional factors." *Wood*, 900 F.3d at 1335–36. In addition, the cases cited by Plaintiff
27 are inconsequential to the present action, because one relates to the appointment of counsel in
28 proceedings governing motions to vacate, set aside, or correct a sentence filed pursuant to 28 U.S.C.
29 § 2255 (*Brown v. U.S.*, 623 F.2d 54 (9th Cir. 1980)), and the other concerns a prisoner's right to
30 counsel in state habeas corpus proceedings (*Hawkins v. Bennett*, 423 F.2d 948 (11th Cir. 1970)). Put
31 simply, Plaintiff does not present a change in circumstances warranting an appointment of counsel
32 at this time.

33 Plaintiff's Motion for Appointment of Counsel (ECF No. 52) is therefore denied.

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